

G. SCOTT EMBLIDGE, State Bar No. 121613  
emblidge@meqlaw.com  
RACHEL J. SATER, State Bar No. 147976  
sater@meqlaw.com  
ANDREW E. SWEET, State Bar No. 160870  
sweet@meqlaw.com  
MOSCONE, EMBLIDGE, & QUADRA, LLP  
220 Montgomery Street, Suite 2100  
San Francisco, California 94104-4238  
Telephone: (415) 362-3599  
Facsimile: (415) 362-2006

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

COYNESS L. ENNIX JR., M.D.,

Plaintiff,

vs.

ALTA BATES SUMMIT MEDICAL  
CENTER,

Defendant.

Case No.: C 07-2486 WHA

**PLAINTIFF'S OBJECTIONS TO  
EVIDENCE IN SUPPORT OF  
DEFENDANT ALTA BATES  
SUMMIT MEDICAL CENTER'S  
MOTION FOR SUMMARY  
JUDGMENT**

**Date: April 25, 2008**

**Time: 8:00 a.m.**

**Dept.: Ctrm. 9, 19<sup>th</sup> Floor**

**Judge: Hon. William H. Alsup**

**Complaint Filed: May 9, 2007**

**Trial Date: June 2, 2008**

Plaintiff objects to the following evidence that Defendant Alta Bates Summit Medical Center (“Alta Bates” or “Defendant”) has presented in support of its Motion for Summary Judgment. Under Federal Rule of Civil Procedure 56(e), “[s]upporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein.” Defendant has filed several declarations, including the exhibits attached thereto, that fall short of the standards of admissibility.

More specifically, Plaintiff hereby objects to the declarations of Drs. Robert Breyer, Jeffrey Breall, Robert Paxton, and William Isenberg as follows:

# **I. OBJECTIONS TO DECLARATION OF ROBERT H. BREYER**

DECLARATION CITES	OBJECTIONS
Paragraph 3 at 3:2-5: “Throughout my involvement in the focused review of Dr. Ennix’s medical records, I saw no evidence of a ‘sham peer review’ being conducted by either NMA, Mercer, or the Alta Bates Summit Medical Center. Nor did I see any evidence of racial discrimination against Dr. Ennix by any individual or entity.”	Inadmissible opinion testimony; improper legal conclusion.

**II. OBJECTIONS TO DECLARATION OF JEFFREY BREALL**

DECLARATION CITES	OBJECTIONS
Paragraph 3 at 3:2-5: “Throughout my involvement in the focused review of Dr. Ennix’s medical records, I saw no evidence of a ‘sham peer review’ being conducted by either NMA, Mercer, or the Alta Bates Summit Medical Center. Nor did I see any evidence of racial discrimination against Dr. Ennix by any individual or entity.”	Inadmissible opinion testimony; improper legal conclusion.

**III. OBJECTIONS TO DECLARATION OF LAMONT D. PAXTON**

DECLARATION CITES	OBJECTIONS
Paragraph 2 at 1:8-9: “Dr. Isenberg informed me that he had notified Dr. Ennix of the AHC’s appointment.”	If submitted for the truth of the matter asserted, the statement is inadmissible hearsay. Fed. R. Evid. 802; Fed. R. Civ. Pro. 56(e).
Paragraph 3 at 1:10-16: “In a letter to Dr. Ennix dated August 24, 2004, I confirmed the appointment of the AHC, and noted that the investigation would cover his performance of minimally invasive procedures, as well as other	If submitted for the truth of the matter asserted, the statement is inadmissible hearsay. Fed. R. Evid. 802; Fed. R. Civ. Pro. 56(e).

1 2 3 4 5 6 7 8 9	matters involving his practice, more generally, both at the Summit Campus and the Alta Bates Campus of ABSMC. I assured him that no conclusions would be drawn on any substantial issues without first giving him an opportunity to comment. I stated that our intent was to complete our task as soon as possible, but that our top priority was to be fair and complete.”	
10 11 12 13 14	Paragraph 4 at 1:27: “We also engaged the services of National Medical Audit (‘NMA’), a reputable independent peer review organization. . .”	Inadmissible conclusion and opinion that NMA is “reputable”; lack of foundation because the opinion is based on assumed facts regarding NMA.
15 16 17 18 19 20 21	Paragraph 4 at 1:26-2:2: “We also engaged the services of National Medical Audit (“NMA”), a reputable independent peer review organization, to assist us in reviewing ten (10) specific cases that appeared clearly to involve substantial quality of care issues.”	Speculation regarding the motivations of others; speculation regarding the quality of care; lack of foundation and personal knowledge regarding ten specific cases to which witness refers. Fed. R. Civ. Pro. 56(e).
22 23 24 25 26 27	Paragraph 5 at 2:3-9: “During the course of the AHC’s investigation, Dr. Ennix was kept abreast of developments, informed of the issues presented, and allowed to submit materials for NMA’s consideration. Before	Lacks foundation and personal knowledge. Dr. Paxton fails to reveal the source of any personal knowledge he may have about the investigation; hearsay.

1 NMA prepared its findings, arrangements were  
 2 made for Dr. Ennix to have extensive  
 3 telephone conferences with the two  
 4 independent practitioners who were assigned  
 5 by NMA to review the cases. One was a  
 6 cardiothoracic surgeon in San Diego, and the  
 7 other was a cardiovascular surgeon in  
 8 Chicago.”  
 9

10 Paragraph 5 at 2:9-10: “In a letter to Dr.  
 11 Isenberg dated April 5, 2005, Dr. Ennix  
 12 expressed his gratitude for the opportunity to  
 13 speak with the reviewers and address the  
 14 issues.”  
 15

If submitted for the truth of the matter asserted,  
 the statement is inadmissible hearsay. Fed. R.  
 Evid. 802; Fed. R. Civ. Pro. 56(e).

16 Paragraph 6 at 2:17-21: “We investigated the  
 17 issues, and found no reasonable justification  
 18 for disregarding or discounting the reviewers’  
 19 findings. Some of the issues raised by Dr.  
 20 Ennix had no relevance to the reviewers’  
 21 professional practices; and the malpractice  
 22 cases that were listed by Dr. Ennix, without  
 23 revealing the results, had all been resolved in  
 24 favor of the reviewers or, in a few instances,  
 25 settled for small amounts.”  
 26  
 27  
 28

If submitted for the truth of the matter asserted,  
 the statement is inadmissible hearsay. Fed. R.  
 Evid. 802; Fed. R. Civ. Pro. 56(e); lack of  
 foundation.

Exhibit A (copy of the AHC's Report and Recommendation).	If submitted for the truth of the matters asserted in the documents, the statements are inadmissible hearsay. Fed. R. Evid. 802; Fed. R. Civ. Pro. 56(e).
Paragraph 9 at 3:13-15: "On August 1, 2005, the President of the Medical Staff sent Dr. Ennix a copy of the AHC's Report and Recommendation, and invited him to attend a special meeting of the MEC on August 15, 2005, to discuss it. Dr. Ennix was also given the opportunity to supplement his presentation with written materials, if he wished."	If submitted for the truth of the matter asserted, the statement is inadmissible hearsay. Fed. R. Evid. 802; Fed. R. Civ. Pro. 56(e); lacks foundation and personal knowledge.
Paragraph 11 at 4:1-9 (entire paragraph): "I have continued to serve as an available resource to the MEC for purposes of reviewing noteworthy cases or issues that have arisen in Dr. Ennix's practice. For example, in late December, 2005, and early January, 2006, I worked with Steven Stanten, M.D., Chair of the Department of Surgery, to review a series of ten (10) cases, five (5) of which involved complications as noted by Dr. Ennix's proctors. As a result of those cases, Dr.	If submitted for the truth of the matter asserted, the statement is inadmissible hearsay. Fed. R. Evid. 802; Fed. R. Civ. Pro. 56(e); speculation regarding the motivations of others; lack of foundation; Dr. Paxton fails to reveal the source of any personal knowledge he may have about Dr. Stanten and Dr. Isenberg's decision to summarily suspend Dr. Ennix's clinical privileges.

1 Stanten and Dr. Isenberg had decided to  
 2 summarily suspend Dr. Ennix's clinical  
 3 privileges on December 10, 2005, pending  
 4 further review. After we reviewed those cases  
 5 in detail, we determined that the suspension  
 6 should be lifted, and it was."  
 7

8 Paragraph 12 at 4:10-18: "On May 4, 2006,  
 9 the AHC reviewed Dr. Ennix's proctoring  
 10 reports, and determined that there were an  
 11 inadequate number of cases to warrant a  
 12 conclusion that the proctoring requirements  
 13 should be lifted. On July 10, 2006, after  
 14 reviewing additional cases, the AHC  
 15 recommended to the MEC that the proctoring  
 16 requirements be discontinued. (Dr. Barry Horn  
 17 resigned from the AHC in April, 2006.)  
 18 However, the AHC also recommended that  
 19 100% retrospective chart review be conducted  
 20 on an ongoing basis, by the Chief of the  
 21 Cardiac Surgery Service and/or his designees.  
 22 The Chief of the Service was, and still is,  
 23 Russell Stanten, M.D. The MEC adopted these  
 24 recommendations."  
 25  
 26  
 27

If submitted for the truth of the matter asserted,  
 the statement is inadmissible hearsay. Fed. R.  
 Evid. 802; Fed. R. Civ. Pro. 56(e); speculation  
 regarding the motivations of others; lack of  
 foundation; Dr. Paxton fails to reveal the  
 source of any personal knowledge.

Paragraph 13 at 5:1-3: "Throughout my involvement in the activities described in this Declaration, I have seen no evidence of 'sham peer review' or racial discrimination against Dr. Ennix by any committee or individual."	Inadmissible opinion testimony. Draws improper legal conclusion.
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#### IV.OBJECTIONS TO DECLARATION OF WILLIAM M. ISENBERG

DECLARATION CITES	OBJECTIONS
Paragraph 6 at 4:13-21: "Every aspect of the peer review process concerning Dr. Ennix was conducted confidentially within the parameters of California Evidence Code Section 1157. Doctors and Medical Center employees who provided information were told of the confidential nature of the proceeding. Peer review documents were marked 'Confidential' and/or 'Subject to Evidence Code 1157.' To my observation, the Medical Staff and the Medical Staff office personnel have been, and remain, vigilant about protecting the confidentiality of the process as such is crucial to the efficacy of the process, which requires that all involved answer inquiries in a totally	As to the conduct of persons other than Dr. Isenberg, these statements lack foundation and are based on speculation regarding the motivations of others.



1	candid manner.”	
2	Paragraph 7 at 6:3-7: “Additionally, the AHC	Irrelevant; as to the conduct of persons other
3	considered an outside physician review by Dr.	than Dr. Isenberg, these statements lack
4	Forest Junod of surgeries Dr. Ennix performed	foundation and are based on speculation
5	in 2002 at the Alta Bates campus. Throughout	regarding the motivations of others.
6	the process, I, and others, consistently	
7	consulted with our Medical Staff counsel,	
8	Harry Shulman, Esq. with the San Francisco	
9	office of Davis Wright Tremaine, LLP.”	
10		
11	Paragraph 8 at 5:8-9: “I believe that I have	Irrelevant; speculative.
12	been sued because I was President of the	
13	Medical Staff during a period of peer review of	
14	Dr. Ennix.”	
15		
16	Paragraph 8 at 5:9-11: “The role I played in	Irrelevant; improper legal conclusion.
17	such process is required by the Medical Staff	
18	Bylaws and California law governing	
19	physician peer review.”	
20		
21	Paragraph 8 at 5:12-15: “I have spent many	Irrelevant.
22	uncompensated hours on not only this, but on	
23	many other peer review processes because I	
24	strongly believe that the confidential peer	
25	review system is an essential part of providing	
26		
27		
28		

1	quality patient care to our community.”	
2	Paragraph 8 at 5:17-18: “At <u>no</u> time did I act	Improper legal opinion.
3	with any racially discriminatory or other non-	
4	peer review related motivation.”	
5		
6	Paragraph 8 at 5:21-25: “I am very concerned	Irrelevant and inadmissible conclusions about
7	about the false accusations that Dr. Ennix has	the falsity of allegations.
8	made against me and the other doctors he has	
9	sued, not only because they are untrue and	
10	disparaging but also because they will make	
11	(and have made) the task of obtaining Medical	
12	Staff participation in peer review activities	
13	exponentially more difficult. Even before the	
14	onset of this litigation, I had difficult obtaining	
15	three members to serve on the AHC appointed	
16	to review Dr. Ennix’s provision of patient	
17	care.”	
18		
19		
20	Paragraph 8 at 5:26-6:4: “Four doctors,	If submitted for the truth of the matter asserted,
21	including two African-Americans, declined my	the statement is inadmissible hearsay. Fed. R.
22	invitation to serve on the AHC. One	Evid. 802; Fed. R. Civ. Pro. 56(e); statements
23	individual, a former Medical Staff President,	lack foundation and are based on speculation
24	told me that his career had suffered from his	regarding the motivations of others; irrelevant.
25	being Chief of Staff and that he could not	
26	afford to have Dr. Ennix mobilize individuals	
27		
28		

1 2 3 4 5 6	against him. Taking time to conduct peer review is itself a burden on a doctor's practice; that burden is multiplied by threats of being sued or otherwise being involved in a litigation process."	
7 8 9 10 11	Exhibit D	If submitted for the truth of the matters asserted in these documents, the statements in the documents are inadmissible hearsay. Fed. R. Evid. 802; Fed. R. Civ. Pro. 56(e).
12 13 14	Paragraph 9 at 6:12: "the poor results of the first four minimally invasive valve procedures. . ."	Inadmissible conclusion regarding "poor result"; no foundation that any of the four cases involved "poor results."
15 16 17 18 19 20	Paragraph 9 at 6:15-17: "concerns expressed by Steven Stanten, M.D. (Chair of the Surgery Department and of the Surgery Peer Review committee) or to me by anesthesiologists of both medical staffs."	If submitted for the truth of the matter asserted, the statement is inadmissible hearsay. Fed. R. Evid. 802; Fed. R. Civ. Pro. 56(e).
21 22 23 24 25	Paragraph 9:20-21: "Dr. Ennix agreed initially to a temporary, and himself suggested a permanent, moratorium on his performance of such procedures."	Irrelevant.
26 27	Paragraph 9 at 6:21-7:6 and Exhibit E:	If submitted for the truth of the matters

1 “Additionally, in March 2004, I reviewed a  
 2 printout of the outcomes of Dr. Ennix’s  
 3 surgeries at the Summit campus from 2000  
 4 through February 2004 compared to the  
 5 surgeries performed by members of his  
 6 medical group as well as to all cardiothoracic  
 7 surgeries performed at Summit for the same  
 8 time period. In my judgment, that comparison  
 9 supported the need for further peer review. Dr.  
 10 Ennix’s open heart surgeries at the Summit  
 11 campus during that entire period had a  
 12 mortality rate of 5.705% compared to all open  
 13 heart surgeries performed during such period (a  
 14 number which includes Dr. Ennix’s  
 15 procedures) which had a mortality rate of  
 16 2.82%. Dr. Ennix’s rate of a return to surgery  
 17 after open heart surgery was 7.718%; that  
 18 number for all surgeons (inclusive of Dr.  
 19 Ennix) was 4.787%. Additionally, the data for  
 20 procedures performed by Dr. Ennix in January  
 21 and February 2004 showed an alarming trend.  
 22 Dr. Ennix’s mortality rate after open heart  
 23 surgeries increased to 15.385% for that two-

asserted in these documents, the statements in  
 the documents are inadmissible hearsay. Fed.  
 R. Evid. 802; Fed. R. Civ. Pro. 56(e); Dr.  
 Isenberg’s conclusions are inadmissible expert  
 opinion testimony and lack any foundation  
 about whether the numbers he cites reflect  
 adjustment for risk factors in patients.

1	month period.”	
2	Paragraph 10 at 7:7-12: “Following review by	If submitted for the truth of the matter asserted,
3	the Surgery Peer Review Committee (which	the statement is inadmissible hearsay. Fed. R.
4	included considering a report done by Dr. Hon	Evid. 802; Fed. R. Civ. Pro. 56(e); statements
5	lee regarding the minimally invasive valve	lack foundation and personal knowledge;
6	surgeries) and the expression of concern by	speculation regarding the motivations of
7	that committee with regard to the conduct and	others.
8	documentation of the minimally invasive valve	
9	procedures, and in light of what the MEC	
10	officers believed was the need to review the	
11	Junod report, the MEC determined to convene	
12	the AHC.”	
13		
14		
15	Paragraph 10 at 7:15-18: “As noted above, Dr.	Speculation regarding Dr. Ennix’s motivation
16	Ennix agreed, voluntarily, to continue his	or state of mind.
17	moratorium on the performance of minimally	
18	invasive valve procedures initially until	
19	completion of the review process, and later on	
20	a permanent basis.”	
21		
22	Paragraph 10 at 7:22-23: “The issues that	Lack of foundation and personal knowledge.
23	arose in Dr. Ennix’s performance of such	
24	procedures have not arisen when others have	
25	performed the procedures.”	
26		
27	Paragraph 11 at 8:7-12: “I made the decision	No foundation for statements about NMA’s
28		

1 2 3 4 5 6 7	to select NMA. I considered NMA's substantial years of experience in reviewing medical records for quality issues (over twenty years) and the nationwide reputations held by leaders of NMA. I was impressed, for example, by the credentials	experience; statement regarding Dr. Milstein are irrelevant given that no evidence exists that he had any involvement whatsoever in reviewing Dr. Ennix.
8 9 10 11 12 13 14 15 16 17 18	Paragraph 11 at 8:18-22: "Indicative of the care applied by the MEC to this peer review process is the fact that fees for this outside audit were about \$115,000, a number which includes charges for over 170 hours of time spent by the three physician reviewers on chart review, data analysis, consideration of material submitted by Dr. Ennix, speaking with Dr. Ennix, and preparation of the report."	Irrelevant; lack of foundation.
19 20 21 22 23 24 25 26	Paragraph 12 at 8:27-9:2: "The NMA identified five instances of poor judgment (leading to death in three cases, post-operative cardiac arrest in one case, and severe complications in another case); six instances of substandard technique; and many instances of 'grossly substandard' operative notes."	If submitted for the truth of the matters asserted in the NMA documents, the statements in the documents are inadmissible hearsay. Fed. R. Evid. 802; Fed. R. Civ. Pro. 56(e); lack of foundation.
27 28	Paragraph 12 at 9:12-23: "I know this because	If submitted for the truth of the matter asserted,

<p>1 two Medical Staff leaders (Dr. Fredric  2 Herskowitz, then Vice President of the Medical  3 Staff and Medical Director of the Intensive  4 Care Unit, and Dr. Steven Stanten, Chair of the  5 Surgery Department) saw the chart in the  6 morning of May 6 without any doctor's note.  7 Dr. Ennix thereafter entered a note, which he  8 dated May 5, that however refers to lab values  9 generated on May 6. While Dr. Ennix insisted  10 that he saw the patient on May 5, there was no  11 contemporaneous note that such was the case;  12 the May 6 note does not describe an adequate  13 physical examination for the first day after  14 open heart surgery; and Dr. Ennix' description  15 of the patient's condition on May 5 (in the May  16 6 note and during a May 10, 2005 discussion  17 with officers of the MEC and the Chair of the  18 Surgery Department) was inconsistent with the  19 patient's actual condition as demonstrated in  20 the patient's medical records."</p>	<p>the statement is inadmissible hearsay. Fed. R.  Evid. 802; Fed. R. Civ. Pro. 56(e); speculation  regarding the timing of Dr. Ennix's entry; lack  of personal knowledge and foundation.</p>
<p>24 Paragraph 12 at 9:23-26: "Taken together with  25 the various problems in attending to patients  26 disclosed in the NMA report (such as Dr.  27</p>	<p>If submitted for the truth of the matters  asserted in the NMA documents, the  statements in the documents are inadmissible</p>

1 2 3 4 5 6 7	Ennix's leaving the hospital immediately following surgery so that he was not present when his patient had a cardiac arrest about eight minutes after leaving the OR), I determined that there was an imminent issue of patient safety."	hearsay. Fed. R. Evid. 802; Fed. R. Civ. Pro. 56(e); lack of foundation and personal knowledge.
8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	Paragraph 13 at 10:4-11: "One of the statistics that I presented to the MEC on May 18, 2005, in addition to discussing the circumstances of the May 6 chart notation and the NMA report, was the fact that Dr. Ennix had 28 cases fall out for peer review in the period of 2003 through April 2004 as compared to a mean of seven cases falling out for the other Summit cardiovascular surgeon during the same period. (The term 'fall out' applies to peer review mandated by certain specified occurrences such as a patient death or a return to surgery. The fall-out definitions are set by the Department, with MEC approval, and are applied uniformly to all members.)"	If submitted for the truth of the matter asserted, the statement is inadmissible hearsay. Fed. R. Evid. 802; Fed. R. Civ. Pro. 56(e); lack of foundation; fails to note that Dr. Ennix performed far more surgeries than his peers so it is not surprising that he would have more cases "fall out" for peer review; Dr. Isenberg again fails to state whether the numbers he cites reflect adjustment for risk factors in patients.
25 26 27	Paragraph 13 at 10:20-23: "Additionally, in April and May 2005, Dr. Ennix was repeatedly	If submitted for the truth of the matter asserted, the statement is inadmissible hearsay. Fed. R.



1 notified in writing by the Chair of the Medical 2 Records Committee of the Medical Staff that 3 his records were delinquent and incomplete.”	Evid. 802; Fed. R. Civ. Pro. 56(e); lack of foundation.
4 Exhibit K; Paragraph 14 at 11:10-19: “My 5 letter discusses the MEC’s analysis of the 6 AHC’s recommendation and its consideration 7 of written reports and testimonials submitted 8 by Dr. Ennix. My 10/11/05 letter notes the 9 conclusions of the AHC, as approved by the 10 MEC, that those who wrote letters on Dr. 11 Ennix’s behalf did not appear to have 12 substantial knowledge of the facts considered 13 by the investigatory bodies. My letter further 14 notes that Dr. Ennix had declined the request 15 of the MEC to provide it with a description of 16 the information presented by Dr. Ennix to the 17 persons who wrote letters on his behalf.”	If submitted for the truth of the matters asserted in these documents, the statements in the documents are inadmissible hearsay. Fed. R. Evid. 802; Fed. R. Civ. Pro. 56(e).
18 Paragraph 15 at 11:20-25: As noted above, on 19 two occasions Dr. Ennix voluntarily agreed to 20 a restriction on his privileges to perform 21 minimally invasive valve procedures, obviating 22 any need for the MEC to consider taking action 23 against those privileges which might have	Speculation regarding Dr. Ennix’s motivation or state of mind.

1 resulted in hearing rights under Article VIII of  
 2 the Bylaws. Specifically, on April 16, 2004,  
 3 Dr. Ennix voluntarily agreed temporarily, and  
 4 on April 26, 2004, he agreed

5  
 6 Paragraph 15 at 12:15-19: "As noted above,  
 7 on two occasions Dr. Ennix voluntarily agreed  
 8 to a restriction on his privileges to perform  
 9 minimally invasive valve procedures, obviating  
 10 any need for the MEC to consider taking action  
 11 against those privileges which might have  
 12 resulted in hearing rights under Article VII of  
 13 the Bylaws. Specifically, on April 16, 2004,  
 14 Dr. Ennix voluntarily agreed temporarily, and  
 15 on April 26, 2004, he agreed permanently, to  
 16 not perform minimally invasive valve  
 17 procedures."  
 18

19  
 20 Paragraph 15 at 11:27-12:7: "Similarly, in  
 21 May 2005, after Dr. Ennix's surgical privileges  
 22 were summarily suspended based on the May 5  
 23 incident and the contents of the just-received  
 24 NMA Report, he requested that his privileges  
 25 be restricted to surgical assisting only, in lieu  
 26 of the ongoing suspension. I had informed Dr.  
 27

Inadmissible legal conclusion regarding  
 exhaustion of administrative remedies; lack of  
 foundation and personal knowledge.

If submitted for the truth of the matter asserted,  
 the statement is inadmissible hearsay. Fed. R.  
 Evid. 802; Fed. R. Civ. Pro. 56(e).

1 Ennix of his right to request a hearing under  
 2 the Bylaws procedure to contest a summary  
 3 suspension of fourteen days or more (Section  
 4 8.2 J of Exhibit A) On May 19, 2005, when  
 5 Dr. Ennix requested restriction of his privileges  
 6 to surgical assisting only, I told him that if the  
 7 MEC accepted such request, the summary  
 8 suspension would be lifted and he would  
 9 forfeit his right to a hearing. Dr. Ennix told me  
 10 that he understood such forfeiture.”  
 11

12 Exhibit M; Paragraph 16 at 12:22-28: “By  
 13 letter dated December 30, 2005 (attached as  
 14 Exhibit M), in my capacity as President of the  
 15 Medical Staff and following consultation with  
 16 Dr. Steven Stanten, Chair of the Surgery  
 17 Department, and the three other officers of the  
 18 MEC, I notified Dr. Ennix of a summary  
 19 suspension of his surgery privileges in light of  
 20 imminent concerns regarding patient safety.  
 21 The December 30, 2005 letter notes that there  
 22 were complications in five out of ten surgeries  
 23 done since the reinstatement of privileges as  
 24 indicated by those proctoring Dr. Ennix.”  
 25  
 26  
 27  
 28

If submitted for the truth of the matters  
 asserted in these documents, the statements in  
 the documents are inadmissible hearsay. Fed.  
 R. Evid. 802; Fed. R. Civ. Pro. 56(e).

<p>Paragraph 16 at 12:28-13:4: Some of the proctors brought to my attention these issues, which included Dr. Ennix's apparent difficult with what the proctors told me should have been an uncomplicated procedure and that a patient's chest was closed at the end of a surgery, prior to Dr. Ennix's assuring that adequate control of bleeding had been accomplished."</p>	<p>If submitted for the truth of the matter asserted, the statement is inadmissible hearsay. Fed. R. Evid. 802; Fed. R. Civ. Pro. 56(e); lack of foundation and personal knowledge.</p>
<p>Paragraph 17 at 13:22-14:5; Exhibit P: "Effective February 1, 2006, communications with Dr. Ennix on behalf of the MEC were from Dr. Fredric Herskowitz, who took over the President position at that time. In July 2006, the MEC, accepting a recommendation of the AHC, lifted the proctoring requirement and imposed a requirement that Dr. Ennix's cases be subject to retrospective chart review by the Chief of the Cardiothoracic Surgery Service or his designee. Attached hereto and incorporated herein by reference as Exhibit P is a true and correct copy of the July 11, 2006 letter sent by Dr. Herskowitz (with copies to</p>	<p>Lack of foundation; inadmissible hearsay; if Exhibit P and the statements regarding Exhibit P are submitted for the truth of the matters asserted in Exhibit P, the statements are inadmissible hearsay. Fed. R. Evid. 802; Fed. R. Civ. Pro. 56(e).</p>

those who had been performing proctoring functions and to the chair of the AHC). I am personally familiar with the contents of this letter through my membership in the MEC. This letter explains the determinations reached by the MEC in which I, along with several other MEC members, participated.”

Paragraph 18 at 14:6-19 (entire paragraph):  
 “Throughout this process and upon the advice of counsel, I, in my capacity as President of the Medical Staff, provided reports to the Medical Board of California pursuant to Section 805 and to the federal National Practitioner Data Bank pursuant to the Health Care Quality Improvement Act regarding the following actions: (1) the April 2004 agreement by Dr. Ennix to restrict his privileges so as not to perform minimally invasive valve surgery; (2) the May 2005 summary suspension and Dr. Ennix’s acceptance thereafter of voluntary restrictions on his privileges; and (3) the October 2005 reinstatement of cardiothoracic surgical privileges subject to proctoring

If submitted for the truth of the matter asserted, the statement is inadmissible hearsay. Fed. R. Evid. 802; Fed. R. Civ. Pro. 56(e); irrelevant.

1 restrictions. Both such oversight agencies  
 2 were also notified of the lifting of the  
 3 proctoring requirements in July 11, 2006. (A  
 4 willful failure to file a report required by  
 5 Section 805 is punishable by a fine not to  
 6 exceed \$100,000 per violation. Section  
 7 805(k)).”  
 8

9 Exhibit Q

Inadmissible hearsay. Fed. R. Evid. 802; Fed.  
 10 R. Civ. Pro. 56(e).

11  
 12 Paragraph 19 at 14:23-15:10: “Being sued in  
 13 this lawsuit makes me very reluctant to further  
 14 participate in peer review of Dr. Ennix  
 15 notwithstanding my knowledge that the  
 16 function is critical for patient safety. This  
 17 lawsuit appears to me to be a continuation of  
 18 Dr. Ennix’s pattern, exhibited throughout the  
 19 peer review described in this declaration, of  
 20 seeking the intervention of persons or  
 21 institutions extraneous to the process for the  
 22 apparent purpose of exerting pressure upon  
 23 those engaged in the peer review to desist from  
 24 effectuating our legal and ethical  
 25 responsibilities for review and correction of  
 26  
 27

Irrelevant; inadmissible opinion testimony; if  
 submitted for the truth of the matter asserted,  
 the statement is inadmissible hearsay. Fed. R.  
 Evid. 802; Fed. R. Civ. Pro. 56(e); lack of  
 foundation; speculation; lack of personal  
 knowledge.

1 poor patient care outcomes. For example,  
 2 Congresswoman Barbara Lee, The Sinkler-  
 3 Miller Medical Association, and the NAACP  
 4 all wrote letters of complaint about the peer  
 5 review of Dr. Ennix to the Medical Center or  
 6 other corporate executives. I should note that,  
 7 although all of the letters have exhibited an  
 8 exposure to only an inaccurate version of the  
 9 facts, the Medical Staff and Medical Center  
 10 representatives have striven to maintain the  
 11 confidentiality obligations that are inherent to  
 12 the integrity of the peer review process. This  
 13 position, however, has made us regularly  
 14 unable to respond substantively to these  
 15 attempted interventions by third parties, and  
 16 has created significant awkwardness and  
 17 tensions.”  
 18  
 19  
 20

21 Plaintiff will respectfully request the Court at the hearing on the Motion for Summary  
 22 Judgment to sustain the above objections and to strike the evidence referred to above.

23 Dated: March 27, 2008

Respectfully Submitted,

24 MOSCONE, EMBLIDGE & QUADRA, LLP

25 By: \_\_\_\_\_/s/  
 26 G. Scott Emblidge  
 27 Rachel J. Sater  
 28 Andrew E. Sweet  
 Attorneys for Coyness L. Ennix Jr., M.D.